

**IN THE SUPREME COURT  
OF THE REPUBLIC OF VANUATU**  
*(Other Jurisdiction)*

**Election Petition**  
**Case No. 16/417 SC/ELTP**

**BETWEEN: Benson Willie Samuels Dhapahan**

*Petitioner*

**AND: Andrew Solomon Napuat**

*Respondent*

**Date of Hearing of  
Decision:** *17th day of March, 2016 at 2:00 PM*

**Before:** *Vincent Lunabek – Chief Justice*

**In Attendance:** *Mr Eric Molbaleh for Petitioner*  
*Mr Kiel Loughman for Respondent*

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**Reasons for Stricking Out the Petition**

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The Petitioner filed an election Petition on 19 February 2016. There was no sworn statement filed in support of it from either the Petitioner or any other person.

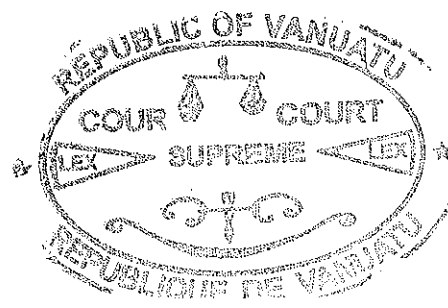
A first Hearing was set on 8 March 2016 at 4.15PM. On that date, the Petitioner's Counsel was not present for the First Hearing to take place as he had court commitments with the Supreme Court on the Island of Epi.

The First Hearing was adjourned to 17 March 2016 for the Petitioner to satisfy the Court that the Petition filed on 19 February 2016 has a foundation pursuant to Rules 2.5(2) (a) (3) and 2.6 (1)(2) (a) (b) (c) of the Election Petition Rules.

On 17 March 2016, Counsel for the Petitioner informed the Court that the Petition has been amended. The Amended Petition was filed on 26 February 2016 with a sworn statement of the Petitioner.

The Amended petition filed on 26 February 2016 contained new substantive grounds when compared to the initial petition filed 19 February 2016.

The only sworn statement in support of the Amended Petition was filed on 26 February 2016 by the Petitioner.



In the present case, the Amended Petition filed on 26 February 2016 was filed outside the statutory time limit of 21 days pursuant to section 57(1) of the Representation of the People Act [Act 146]. The elections occurred on 22 January 2016. The results of such elections were published in the Gazette on 1 February 2016. The filing of the Amended Petition on 26 February 2016 with the sworn statement of the Petitioner in support were filed outside the statutory time limit under s.57(1) and the provisions of rules 2.3(2)(a)(b) of the Election Petition Rules.

The Petition must be struck out. Cases of Jimmy –v- Rarua [1998] VUCA 4; Civil Appeal Case No.02 of 1999 (23 April 1998) and Leinavao Tasso –v- Ioan Simon Omawa and ors, Election Petition case No.01 of 2008 are case authorities in support of the striking out of the Petition.

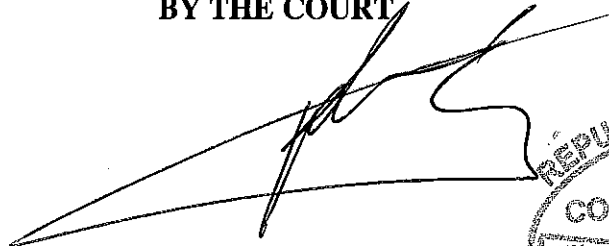
The Court makes the following orders:

**ORDERS**

1. The Petition (as Amended) with the sworn statement of the Petitioner filed in support of it were filed outside the statutory time limit under s.57(1).
2. The Petition (as Amended) is Struck Out.
3. The Respondent is entitled to his costs of VT10,000 to be paid from the deposit paid by the Petitioner in Court.
4. The balance of deposit of VT10,000 shall be returned to the Petitioner.

**DATED at Port Vila this 17th day of March, 2016**

**BY THE COURT**



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**Vincent Lunabek**

**Chief Justice**

